executed by the S. P. Smith Lumber Company and S. P. Smith; an order for $5,000 drawn by Menefee on the lumber company, in favor of one Tomlinson and accepted by the company; the assumption of an accommodation note for $2,950 by the company, and $3,000 in cash paid by the company. The transaction caused its insolvency. Menefee seeks to have the promissory notes given in consideration for his shares proved as a claim against the bankrupt estate. *Held,* that a corporation has no power to purchase shares of its own stock when the transaction operates as a fraud on its creditors. *In re S. P. Smith Lumber Company* (1904), (District Court, N. D. Tex.) 132 Fed. Rep. 618.

While by the great weight of authority in the United States corporations have the power to purchase their own shares in the absence of statutory restriction, yet the purchase must be made in good faith and without prejudice or injury to creditors. *Shoemaker* v. *Washburn Lumber Company,* 97 Wis. 585, 73 N. W. Rep. 333; *First Nat'l Bank* v. *Salem Mills Co.,* 39 Fed. Rep. 89. The transaction must not be to the injury of the shareholders. *Price* v. *Pine Mountain Iron and Coal Co.* (Ky.), 32 S. W. Rep. 267; I WILGUS CORP. CAS. 1047. A few courts hold that corporations have no such power. *Coppin* v. *Greenlees and Ransom Co.,* 38 Ohio St. Rep. 275, 43 Am. Rep. 425; *Herring* v. *Ruskin Co-Op. Ass'n.* (Tenn.), 52 S. W. Rep. 327. In *Hall* v. *Henderson,* 126 Ala. 449, the facts were very similar to those in the case at hand and the purchase was likewise held invalid. See also *Hamor* v. *Taylor, etc. Co.,* 84 Fed. Rep. 392.

DAMAGES—MEASURE—CONTRIBUTION.—Action by an artist to recover damages for being wrongfully deprived of two sculptured busts shipped from Germany, and sold by the United States Government for custom duty. One Mosle paid the freight charges from Germany to the United States, and gave notice at the sale of his claim. Ladd, one of the defendants, became purchaser of the busts. The plaintiff alleges that Ladd and Mosle, the defendants, entered into a conspiracy to suppress competition at the sale, and set up a separate cause of action against Mosle, alleging that he, as agent, had agreed to bid in the property for the plaintiff and failed to do so. *Held,* that $1,226 was excessive damages. *Ladd et al.* v. *Ney* (1904) — Tex. Civ. App. —, 81 S. W. Rep. 1007.

The only theory on which the plaintiff could recover against both defendants was the alleged conspiracy between them, and if Mosle was a tort feasor, he was not entitled to contribution. He contended that this case falls wthin an exception to the general rule as announced in *City of San Antonio* v. *Smith,* 94 Tex. 271, 59 S. W. 1109. The rule referred to would preclude the demand asserted by Mosle against his codefendant, because he is liable for the damages which he caused by his misconduct. *Ehrgott* v. *New York,* 96 N. Y. 264, 281. In the principal case the busts had no market value, and there was no evidence of the cost of their production except as testified by the plaintiff. There was no use contemplated other than delivering them to the parties for whom they were made. In such a case the value is to be properly fixed by considerations of cost and actual worth at the time of

loss, without reference to what they could be sold for in a particular market. *Denver Ry. Co.* v. *Frame,* 6 Colo. 385. What elements of value may be taken into consideration and what tests of value applied when there is no market value of the property in question, are governed by no fixed rule. *Watt* v. *Nevada Central Railroad Company,* 23 Nev. 154, 64 Am. St. Rep. 772.

DEEDS—CONSTRUCTION—DESCRIPTION OF SUBJECT MATTER.—Defendant W. had platted his land between a public highway and the shore of Lake Huron, for summer resort purposes. The lots, as appeared by the plat, extended to what was designated as the "beach." One of these lots was deeded to complainant. This conveyance contained a clause, as did all those to other grantees, that the beach was to be put "to such use as is usual for residents and visitors at a family summer resort to make of a beach in connection with such resort." Defendant attempted to remove sand of valuable mineral properties from the beach claiming that he had retained the fee to the shore. *Held,* such removal should be enjoined. *Cram v. Ward et al.* (1904), — Mich. —, 100 N. W. Rep. 564.

This decision is based on the complainant's exclusive right, together with other grantees of the defendant in common to the "improvement, use and enjoyment" of the beach. Complainant's ownership, with other grantees of the defendant, in the beach would extend to low water mark, the fee of the land under the great lakes being in the state. *People* v. *Silberwood,* 110 Mich. 103. And, as is held in the principal case, it is undoubted that a conveyance of the uses of and dominion over land conveys the land itself. WASHBURN REAL PROPERTY, Vol. III, § 2289; *Clement and Masser* v. *Youngman,* 40 Pa. St. 341. And on the same principle, a gift of the produce of a fund is a gift of that produce in perpetuity; and so is a gift of the fund itself, unless a contrary intention appears. *Keene's Appeal,* 64 Pa. St. 274; *Adamson* v. *Armitage,* 19 Ves. Jr. 416; *Campbell* v. *Gilbert,* 6 Wharton 78; *Hellman* v. *Hellman,* 4 Rawle 450. So a general power of disposal carries with it the absolute property wherever a limited interest is not specified. *Morris* v. *Phaler,* 1 Watts 389. From all that appears in the principal case, the grantor by not expressly reserving rights in the beach, must be held to have intended to reserve none.

EASEMENTS—RECITAL IN DEED—INJUNCTION.—The owner of a corner lot 124 ft. front by 160 ft. deep conveyed to different parties several strips 120 ft. deep, extending "to a driveway 12 ft. wide." Subsequently, he conveyed to the defendant the rear parcel 40 ft. by 124 ft., facing on the side street, "reserving 12 ft. on the west side as a driveway to be used in common by the owners of the land adjoining and by said grantee." Plaintiff is the owner through mesne conveyance of the adjacent portion then still retained by the common grantor, one of the deeds reciting that the lot extended "to a driveway 12 ft. wide," the other, "to a proposed driveway 12 ft. wide," and she now seeks to enjoin the defendant from building a fence between her lot and the said driveway, and from erecting a gate at the end. *Held,* plaintiff is entitled to injunction against the erection of the fence. *Gibbons* v. *Ebding* (1904), — Ohio —, 71 N. E. Rep. 720.